

LABOUR DEPARTMENT

The 6th May, 1987

No. 9/1/87-6Lab./2550.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of (i) Deputy Commissioner, Ambala City, (ii) Administrator, M.C. Shahzadpur (Ambala).

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER,
LABOUR COURT, AMBALA

Reference No. 290 of 1985

SHRI RAKESH KUMAR C/O SHRI RAJESHWAR NATH, 2655, TIMBER MARKET, AMBALA CANTT. AND THE MANAGEMENT OF THE M/S (I) DEPUTY COMMISSIONER, AMBALA CITY, (II) ADMINISTRATOR, M.C., SHAHZADPUR (AMBALA)

Present:

Shri Rajeshwar Nath for workman.

Shri S. Bindra, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—vide clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947, referred dispute between Shri Rakesh Kumar and Administrator, Municipality, Shahzadpur. The terms of the reference are as under :—

“Whether termination of services of Shri Rakesh Kumar is just and correct,

if not to what relief is he entitled ?”

Workman through his demand notice alleged that he joined service of respondent-management as a Tax Clerk on 6th January, 1983. His services were terminated on 12th June, 1985 in violation of provisions of section 25(F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that the reference is bad for mis-joinder of necessary parties. The workman was employed on daily wages as a Casual Labourer. He was neither a regular nor a confirmed employee so on receipt of regular candidate from Deputy Commissioner, Ambala, services of workman were terminated as per terms and conditions of the service.

Workman filed replication through which he reiterated his own claim.

On the pleadings of the parties the following issues were framed :—
ISSUES:

- (1) Whether termination of services of workman is unjust and illegal, if so, its effect ? OPW
- (2) Whether reference is bad for mis-joinder of necessary parties, if so, its effect ? OPR
- (3) Relief ?

I have heard Authorised Representatives of the parties and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under :—

ISSUE NO. 1:

Workman in support of this case examined himself as AW-1. He supported his claim while in support of respondent-management, Shri Bali Ram, Secretary, MW-1 supported the case of the workman. As per the evidence of the parties it is evident that workman joined service of respondent-management on daily wages and remained in service of respondent more than 240 days. At the time of termination of his services no notice, no retrenchment compensation was given to him. So there is a clear violation of provisions of section 25(F) of Industrial Disputes Act, 1947.

In view of the above circumstances, workman is entitled to reinstatement with continuity in service as well as pay in lieu of notice period and retrenchment-compensation. Workman has not claimed back wages in his statement, so he is not entitled to back wages.

In place of workman regular candidates have been recruited without giving any preference to the workman who had rendered service more than 240 days to the respondent-management. It has been observed by the Hon'ble Punjab and Haryana High Court in case Nawanshahar Central Co-operative Bank Ltd. and Labour Court, reported in 1980-57 FJR, Page 206 in which it has been observed that a workman who has been retrenched by the employer and who offers himself for re-employment for a similar post shall have preference over other person. The section is widely worded. It does not say that the section will be applicable if the employer wants to employ a workman on the same post from which the employee has been retrenched. It is wide enough to cover the case of a retrenched employee who has been recruited for a specific period on an *ad hoc* basis. In my view, the finding of the Tribunal that the petitioner is entitled to the post of the Clerk in preference to others under section 25(H) is correct.

In view of the above Law and facts of this case the workman had a right of preference at the time of regular selection but he was not considered, so he is entitled to reinstatement and relief of continuity in service and pay, in lieu of, notice, period, as well as retrenchment compensation. So this issue is decided, in favour of, workman against the respondent-management.

ISSUE NO. 2:

The reference is not at all bad for mis-joinder of necessary parties because the real employer of the workman is Deputy Commissioner, Ambala. Services of workman were terminated under the orders of Deputy Commissioner, Ambala, by Administrator, Muni-

cipality, Ambala. However, no demand notice was served upon Administrator but he stands impleaded in this Industrial Dispute automatically. If the workman has impleaded Deputy Commissioner, Ambala, so reference is proper. This issue is decided, in favour of, workman against the respondent-management.

ISSUE NO. 3:

For the foregoing reasons on the basis of my issuewise findings the order of reinstatement of the workman with continuity in service, pay in lieu of, notice period as well as retrenchment compensation without back wages. I pass award regarding the dispute in hand accordingly. Dated the 10th February, 1987.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.

Endorsement No. 323, dated 10th February, 1987.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

The 10th February, 1987.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.

The 5th March, 1987

No. 9/3/87-6Lab./860.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s, Haryana Urban Development Authority (Horticulture Deptt.) Estate Office, Sector 16, Faridabad:

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT, FARIDABAD.

Reference Nos. 463 of 1985 and 45 of 1986.

between

SHRI SHANKAR DAYAL, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S HARYANA URBAN DEVELOPMENT AUTHORITY (HORTICULTURE DEPTT.), ESTATE OFFICE, SECTOR 16, FARIDABAD

Present :

Shri Hoob Lal for the workman.

Shri M. Kaushik for the respondent.

AWARD

These references under section 10 (1) (c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour).—*vide* its endorsement No. ID/FD/52101-5, dated 24th December, 1986 and ID/FD/34864—69, dated 26th August, 1985 to adjudicate upon the dispute of service matter covered by second schedule under section 7 of the said Act, arisen between Shri Shankar Dayal, workman and the respondent-management of M/s. Haryana Urban Development Authority (Horticulture Deptt.), Estate Office, Sector 16, Faridabad. Accordingly, it has been registered as references No. 463/85 and Ref. No. 45 of 1986.

2. It has been claimed by Shri Shankar Dayal that he was employed by the respondent in December, 1981 as a Mali and his services were terminated on 3rd December, 1984 and was reinstated on 9th January, 1985 as a result of settlement, dated 3rd January, 1985. It has further been alleged by him that he was again terminated on 18th July, 1985. Allegations are that his services were terminated without any valid reason and he be reinstated into his job with continuity of service and further with full back wages.

3. On notice, respondent had appeared and filed written Statement. It was claimed that he was employed in 1982 and he had left the service voluntarily. It is admitted that he was reinstated in June and he had himself had left the job on 17th July, 1985. It has also been pointed out that he has since been reinstated as a Mali. Rejoinder filed by him reveals to the effect that he had rejoined on 21st February, 1986. He has repeated his other claim and allegations.

4. The following issues were framed in both the references separately :—

(1) As per reference ?

In support of written statement, there is no statement of S.D.O. On the other hand Shankar Dayal had also appeared. At the request of the parties both the cases have been taken up together and are being disposed of,—*vide* this judgement since facts and law involved are the same. I have heard the parties as represented above. The findings are as below :—

Issue No. 1 :—

5. The facts of the case are interesting and of extraordinary type. Shankar Dayal was working as a Mali with the respondent and he was not allowed to resume duty w.e.f. 3rd December, 1984. In between the parties, the parties had reached at settlement on 3rd January, 1985 and he was taken on duty on 9th January, 1985. His services were again terminated w.e.f. 18th July, 1985. It is revealed, from the record that respondent had made an offer on 20th February, 1986 to take him back as a Mali and that was accepted by him and he has since joined his duties. The dispute to be determined is the validity of both the orders,—*vide* which his services were terminated. There is no dispute that his period of service had been of more than 240 days and as such he is entitled to be termed as being in continuous service as defined in section 25-B of said Act. It is also not disputed that no pay or compensation was ever offered or paid to him as a condition precedent to terminate his services and if it is so then both the orders were passed against the spirit of Section 25-F of the said Act and as such, the same are hereby quashed. He had already been reinstated. He is also allowed his full back wages and further with continuity of service. Issue accordingly, decided in favour of workman.

6. As a result of this discussion, I accept both the references and answer in favour of Shankar Dayal as pointed out above.

A.S. CHALIA,

Dated, the 6th November, 1986.

Presiding Officer,
Labour Court, Faridabad.

Endstt. No. 2883, dated 21st November, 1986.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Deptt., Chandigarh, as required under Section 15 of Industrial Disputes Act.

A.S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.